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10/602,459	06/23/2003	David P. Paradis	H0005624.36159 - 4580	2650
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BUCHALTER NEMER 18400 VON KARMAN AVE. SUITE 800 IRVINE, CA 92612				
EXAMINER				
MATZEK, MATTHEW D				
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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/602,459
Filing Date: June 23, 2003
Appellant(s): PARADIS ET AL.

Sandra P. Thompson
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/3/2007 appealing from the Office action mailed 7/25/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

3,608,297	COBB et al.	9-1971
2003/0165656	MILLER et al.	9-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-26 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cobb et al. (US 3,608,297) in view of Miller et al. (US 2003/0165656).

- a. Cobb et al. teach a polyamide yarn suitable for use in carpets comprising 85% of filaments containing 1% titanium dioxide and 15% of filaments containing 0.02% titanium dioxide (col. 2, lines 12-14). The term filament includes both continuous filaments and filaments in staple fiber form (col. 2, lines 3-5). The polyamide yarns may be nylon (Table 1). The filaments of each titanium dioxide group may have different denier (claim 8). The applied invention teaches the use of 12 denier fibers (Table 5). The invention of Cobb et al. is silent as to the use of binder fibers.
- b. Miller et al. teach a carpet fiber and binder material comprising binder fibers of nylon 6, nylon 66, and nylon 12 [0023] and carpet fibers of denier of at least 1 and may be made of polyester [0021]. The carpet fibers may include additives such as pigments, dyes and optical brighteners [0021]. The carpet fibers are staple fibers [0003] and the invention more preferably comprises 1-5 weight percent binder fibers [0035].
- c. Since Cobb et al. and Miller et al. are from the same field of endeavor (i.e. nylon carpet fibers), the purpose disclosed by Miller et al. would have been recognized in the pertinent art of Cobb et al.
- d. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have added the binder fibers to the invention of Cobb et al. with the motivation of having all the benefits of staple fiber combined with the benefits of continuous filament yarn carpet as disclosed by Miller et al. [0014]. These benefits

include improved tuft definition, improved worn appearance and wear resistance, reduced fuzzing and bearding, a carpet which can also be manufactured at decreased production costs as compared to carpets of similar quality made conventionally, and a staple carpet that can be made in loop-pile constructions.

(10) Response to Argument

- A. Appellant argues that Examiner has failed to provide the necessary suggestion or motivation to combine the Cobb et al. and Miller et al. references and point out how one of ordinary skill in the art would read Cobb and determine that the yarns or carpet fibers need to be improved. Cobb et al. is directed to synthetic yarns that may comprise staple fibers (col. 2, lines 4-5) for use in carpets. Miller et al. disclose that the use of staple fibers used in the formation of carpet yarns result in a number of undesirable effects [0011]. Miller et al. clearly teach that the use of binder fibers prevent the aforementioned effects. Therefore, Miller et al. teach that it would be advantageous to use binder fibers in the formation of carpet yarns comprising staple fibers.
- B. Appellant argues that because Cobb et al. do not state that there are additional needs that should be met by something like binder fiber, there is no motivation to combine the references. A holding of obviousness can be based on a showing that there was “an apparent reason to combine the known elements in the fashion claimed.” KSR, 127 S. Ct. at 1740-41, 82 USPQ2d at 1396. In other words, “there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” Id., 127 S. Ct. at 1741, 82 USPQ2d at 1396 (quoting In re Kahn, 441 F.3d 977, 987, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)). As set forth in the previous

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paragraph, the articulated reasoning and rational underpinning to support the legal conclusion of obviousness is provided for in Miller et al. [0014]. The secondary reference, Miller et al., teaches that there are undesirable effects when making carpet yarns of staple fibers and that these effects may be remedied by the use of binder fibers.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Matthew D Matzek/
Examiner, Art Unit 1794

/Terrel Morris/
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Supervisory Patent Examiner
Group Art Unit 1794

Conferees:

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